

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2580**

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**Introduced by Assembly Member Olsen**

February 19, 2016

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An act to amend Sections 366.21, 366.22, 366.25, and 366.26 of, and to add Section 398 to, add Section 16010.7 to the Welfare and Institutions Code, relating to juveniles.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2580, as amended, Olsen. ~~Dependency proceedings. Foster care: placements.~~

*Existing law finds and declares that foster parents are one of the most important sources of information about the children in their care and that courts should know, at the earliest possible date, the interest of a caretaker in providing legal permanency for a child.*

*This bill would authorize a caregiver, if a foster child is removed from his or her care in order to reunify with his or her parent or guardian, to indicate to the child's social worker that he or she is interested in providing and willing to provide care for the child in the future if the child is in need of foster care placement.*

~~Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a~~

dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary placement of a dependent child, including placement with a licensed foster family home. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. If the court orders the removal of a minor who is adjudged to be a dependent child of the court, existing law requires the court to order the care, custody, control, and conduct of the child to be under the supervision of a social worker who may place the child in specified settings, including a foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available or with a foster family agency to be placed in a suitable licensed foster family home or certified family home.

The bill would require the social worker, at the time a child is being considered for placement in a foster home, to provide to a foster parent or foster parents of the dependent child specified information, including notification that the foster parent has the right to be present at the dispositional hearing and at any hearing thereafter at which the status of the child is at issue. By imposing additional duties on county welfare agencies, this bill would impose a state-mandated local program.

If a court orders the removal of a child from the physical custody of his or her parent, existing law generally requires the court to order the return of the child to the physical custody of his or her parent at the review hearings held 6 months, 12 months, 18 months, and 24 months, respectively, after the initial disposition hearing, unless the court finds that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child. Existing law requires the court to specify the factual basis for its conclusion that the return of the child would create a substantial risk of detriment, or substantial danger, to the safety, protection, or physical or emotional well-being of the child.

This bill would require the court to specify in writing the factual basis for its conclusions.

If the court determines, based on the assessments provided to the court, by a clear and convincing standard, that it is likely the child will be adopted, existing law requires the court to terminate parental rights and order the child placed for adoption, unless certain circumstances exist, including that the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more specified circumstances. If the court finds that termination of parental

rights would be detrimental to the child, existing law requires the court to state its reasons in writing or on the record. Existing law authorizes a child who has not been adopted after the passage of at least 3 years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan to petition the juvenile court to reinstate parental rights pursuant to specified procedures. Existing law requires the court to grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the best interests of the child. If the court reinstates parental rights over a child who is under 12 years of age, existing law requires the court to specify the factual basis for its conclusion that it is in the best interest of the child to reinstate parental rights.

The bill would instead require the court to state its reasons in writing and on the record if the court finds that termination of parental rights would be detrimental to the child, and would require the court to specify in writing the factual basis for its conclusion that it is in the best interest of the child to reinstate parental rights if the court finds by clear and convincing evidence that the child is no longer likely to be adopted.

The bill would make other technical, nonsubstantive changes:

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 16010.7 is added to the Welfare and
- 2     Institutions Code, to read:
- 3     16010.7. If a foster child is removed from his or her caregiver
- 4     in order to reunify with his or her parent or guardian, the caregiver
- 5     may indicate to the child's social worker at the time the child is
- 6     removed from his or her care that the caregiver is interested in
- 7     providing and willing to provide care for the child in the future if
- 8     the child is removed from his or her parent or guardian and in
- 9     need of foster care placement.

1     SECTION 1. ~~Section 366.21 of the Welfare and Institutions~~  
2     Code is amended to read:

3     366.21. (a) ~~Every hearing conducted by the juvenile court~~  
4     ~~reviewing the status of a dependent child shall be placed on the~~  
5     ~~appearance calendar. The court shall advise all persons present at~~  
6     ~~the hearing of the date of the future hearing and of their right to~~  
7     ~~be present and represented by counsel.~~

8     (b) ~~Except as provided in Sections 294 and 295, notice of the~~  
9     ~~hearing shall be provided pursuant to Section 293.~~

10    (c) ~~At least 10 calendar days prior to the hearing, the social~~  
11    ~~worker shall file a supplemental report with the court regarding~~  
12    ~~the services provided or offered to the parent or legal guardian to~~  
13    ~~enable him or her to assume custody and the efforts made to~~  
14    ~~achieve legal permanence for the child if efforts to reunify fail,~~  
15    ~~including, but not limited to, efforts to maintain relationships~~  
16    ~~between a child who is 10 years of age or older and has been in~~  
17    ~~out-of-home placement for six months or longer and individuals~~  
18    ~~who are important to the child, consistent with the child's best~~  
19    ~~interests; the progress made; and, where relevant, the prognosis~~  
20    ~~for return of the child to the physical custody of his or her parent~~  
21    ~~or legal guardian; and shall make his or her recommendation for~~  
22    ~~disposition. If the child is a member of a sibling group described~~  
23    ~~in subparagraph (C) of paragraph (1) of subdivision (a) of Section~~  
24    ~~361.5, the report and recommendation may also take into account~~  
25    ~~those factors described in subdivision (e) relating to the child's~~  
26    ~~sibling group. If the recommendation is not to return the child to~~  
27    ~~a parent or legal guardian, the report shall specify why the return~~  
28    ~~of the child would be detrimental to the child. The social worker~~  
29    ~~shall provide the parent or legal guardian, counsel for the child,~~  
30    ~~and any court-appointed child advocate with a copy of the report,~~  
31    ~~including his or her recommendation for disposition, at least 10~~  
32    ~~calendar days prior to the hearing. In the case of a child removed~~  
33    ~~from the physical custody of his or her parent or legal guardian,~~  
34    ~~the social worker shall, at least 10 calendar days prior to the~~  
35    ~~hearing, provide a summary of his or her recommendation for~~  
36    ~~disposition to any foster parents, relative caregivers, and certified~~  
37    ~~foster parents who have been approved for adoption by the State~~  
38    ~~Department of Social Services when it is acting as an adoption~~  
39    ~~agency or by a county adoption agency, community care facility,~~  
40    ~~or foster family agency having the physical custody of the child.~~

1 The social worker shall include a copy of the Judicial Council  
2 Caregiver Information Form (JV-290) with the summary of  
3 recommendations to the child's foster parents, relative caregivers,  
4 or foster parents approved for adoption, in the caregiver's primary  
5 language when available, along with information on how to file  
6 the form with the court.

7 (d) Prior to any hearing involving a child in the physical custody  
8 of a community care facility or a foster family agency that may  
9 result in the return of the child to the physical custody of his or  
10 her parent or legal guardian, or in adoption or the creation of a  
11 legal guardianship, or in the case of an Indian child, in consultation  
12 with the child's tribe, tribal customary adoption, the facility or  
13 agency shall file with the court a report, or a Judicial Council  
14 Caregiver Information Form (JV-290), containing its  
15 recommendation for disposition. Prior to the hearing involving a  
16 child in the physical custody of a foster parent, a relative caregiver,  
17 or a certified foster parent who has been approved for adoption by  
18 the State Department of Social Services when it is acting as an  
19 adoption agency or by a county adoption agency, the foster parent,  
20 relative caregiver, or the certified foster parent who has been  
21 approved for adoption by the State Department of Social Services  
22 when it is acting as an adoption agency or by a county adoption  
23 agency, may file with the court a report containing his or her  
24 recommendation for disposition. The court shall consider the report  
25 and recommendation filed pursuant to this subdivision prior to  
26 determining any disposition.

27 (e) (1) At the review hearing held six months after the initial  
28 dispositional hearing, but no later than 12 months after the date  
29 the child entered foster care as determined in Section 361.49,  
30 whichever occurs earlier, after considering the admissible and  
31 relevant evidence, the court shall order the return of the child to  
32 the physical custody of his or her parent or legal guardian unless  
33 the court finds, by a preponderance of the evidence, that the return  
34 of the child to his or her parent or legal guardian would create a  
35 substantial risk of detriment to the safety, protection, or physical  
36 or emotional well-being of the child. The social worker shall have  
37 the burden of establishing that detriment. At the hearing, the court  
38 shall consider the criminal history, obtained pursuant to paragraph  
39 (1) of subdivision (f) of Section 16504.5, of the parent or legal  
40 guardian subsequent to the child's removal to the extent that the

1 criminal record is substantially related to the welfare of the child  
2 or the parent's or guardian's ability to exercise custody and control  
3 regarding his or her child, provided the parent or legal guardian  
4 agreed to submit fingerprint images to obtain criminal history  
5 information as part of the case plan. The court shall also consider  
6 whether the child can be returned to the custody of his or her parent  
7 who is enrolled in a certified substance abuse treatment facility  
8 that allows a dependent child to reside with his or her parent. The  
9 fact that the parent is enrolled in a certified substance abuse  
10 treatment facility shall not be, for that reason alone, prima facie  
11 evidence of detriment. The failure of the parent or legal guardian  
12 to participate regularly and make substantive progress in  
13 court-ordered treatment programs shall be prima facie evidence  
14 that return would be detrimental. In making its determination, the  
15 court shall review and consider the social worker's report and  
16 recommendations and the report and recommendations of any child  
17 advocate appointed pursuant to Section 356.5; and shall consider  
18 the efforts or progress, or both, demonstrated by the parent or legal  
19 guardian and the extent to which he or she availed himself or  
20 herself of services provided, taking into account the particular  
21 barriers to a minor parent or a nonminor dependent parent, or an  
22 incarcerated, institutionalized, detained, or deported parent's or  
23 legal guardian's access to those court-mandated services and ability  
24 to maintain contact with his or her child.

25 (2) Regardless of whether the child is returned to a parent or  
26 legal guardian, the court shall specify in writing the factual basis  
27 for its conclusion that the return would be detrimental or would  
28 not be detrimental. The court also shall make appropriate findings  
29 pursuant to subdivision (a) of Section 366; and, where relevant,  
30 shall order any additional services reasonably believed to facilitate  
31 the return of the child to the custody of his or her parent or legal  
32 guardian. The court shall also inform the parent or legal guardian  
33 that if the child cannot be returned home by the 12-month  
34 permanency hearing, a proceeding pursuant to Section 366.26 may  
35 be instituted. This section does not apply in a case where, pursuant  
36 to Section 361.5, the court has ordered that reunification services  
37 shall not be provided.

38 (3) If the child was under three years of age on the date of the  
39 initial removal, or is a member of a sibling group described in  
40 subparagraph (C) of paragraph (1) of subdivision (a) of Section

1 361.5, and the court finds by clear and convincing evidence that  
2 the parent failed to participate regularly and make substantive  
3 progress in a court-ordered treatment plan, the court may schedule  
4 a hearing pursuant to Section 366.26 within 120 days. If, however,  
5 the court finds there is a substantial probability that the child, who  
6 was under three years of age on the date of initial removal or is a  
7 member of a sibling group described in subparagraph (C) of  
8 paragraph (1) of subdivision (a) of Section 361.5, may be returned  
9 to his or her parent or legal guardian within six months or that  
10 reasonable services have not been provided, the court shall continue  
11 the case to the 12-month permanency hearing. The court shall  
12 specify in writing the factual basis for its conclusion that there is  
13 a substantial probability that the child may be returned to his or  
14 her parent or legal guardian within six months or that reasonable  
15 services have not been provided, justifying continuance to the  
16 12-month permanency hearing.

17 (4) For the purpose of placing and maintaining a sibling group  
18 together in a permanent home, the court, in making its  
19 determination to schedule a hearing pursuant to Section 366.26  
20 for some or all members of a sibling group, as described in  
21 subparagraph (C) of paragraph (1) of subdivision (a) of Section  
22 361.5, shall review and consider the social worker's report and  
23 recommendations. Factors the report shall address, and the court  
24 shall consider, may include, but need not be limited to, whether  
25 the sibling group was removed from parental care as a group, the  
26 closeness and strength of the sibling bond, the ages of the siblings,  
27 the appropriateness of maintaining the sibling group together, the  
28 detriment to the child if sibling ties are not maintained, the  
29 likelihood of finding a permanent home for the sibling group,  
30 whether the sibling group is currently placed together in a  
31 preadoptive home or has a concurrent plan goal of legal  
32 permanency in the same home, the wishes of each child whose  
33 age and physical and emotional condition permits a meaningful  
34 response, and the best interests of each child in the sibling group.  
35 The court shall specify in writing the factual basis for its finding  
36 that it is in the best interests of each child to schedule a hearing  
37 pursuant to Section 366.26 within 120 days for some or all of the  
38 members of the sibling group.

39 (5) If the child was removed initially under subdivision (g) of  
40 Section 300 and the court finds by clear and convincing evidence

1 that the whereabouts of the parent are still unknown, or the parent  
2 has failed to contact and visit the child, the court may schedule a  
3 hearing pursuant to Section 366.26 within 120 days. The court  
4 shall take into account any particular barriers to a parent's ability  
5 to maintain contact with his or her child due to the parent's  
6 incarceration, institutionalization, detention by the United States  
7 Department of Homeland Security, or deportation. If the court  
8 finds by clear and convincing evidence that the parent has been  
9 convicted of a felony indicating parental unfitness, the court may  
10 schedule a hearing pursuant to Section 366.26 within 120 days.

11 (6) If the child had been placed under court supervision with a  
12 previously nonecustodial parent pursuant to Section 361.2, the court  
13 shall determine whether supervision is still necessary. The court  
14 may terminate supervision and transfer permanent custody to that  
15 parent, as provided for by paragraph (1) of subdivision (b) of  
16 Section 361.2.

17 (7) In all other cases, the court shall direct that any reunification  
18 services previously ordered shall continue to be offered to the  
19 parent or legal guardian pursuant to the time periods set forth in  
20 subdivision (a) of Section 361.5, provided that the court may  
21 modify the terms and conditions of those services.

22 (8) If the child is not returned to his or her parent or legal  
23 guardian, the court shall determine whether reasonable services  
24 that were designed to aid the parent or legal guardian in  
25 overcoming the problems that led to the initial removal and the  
26 continued custody of the child have been provided or offered to  
27 the parent or legal guardian. The court shall order that those  
28 services be initiated, continued, or terminated.

29 (f) (1) The permanency hearing shall be held no later than 12  
30 months after the date the child entered foster care, as that date is  
31 determined pursuant to Section 361.49. At the permanency hearing,  
32 the court shall determine the permanent plan for the child, which  
33 shall include a determination of whether the child will be returned  
34 to the child's home and, if so, when, within the time limits of  
35 subdivision (a) of Section 361.5. After considering the relevant  
36 and admissible evidence, the court shall order the return of the  
37 child to the physical custody of his or her parent or legal guardian  
38 unless the court finds, by a preponderance of the evidence, that  
39 the return of the child to his or her parent or legal guardian would  
40 create a substantial risk of detriment to the safety, protection, or



1 physical or emotional well-being of the child. The social worker  
2 shall have the burden of establishing that detriment.

3 (A) At the permanency hearing, the court shall consider the  
4 criminal history, obtained pursuant to paragraph (1) of subdivision  
5 (f) of Section 16504.5, of the parent or legal guardian subsequent  
6 to the child's removal to the extent that the criminal record is  
7 substantially related to the welfare of the child or the parent's or  
8 legal guardian's ability to exercise custody and control regarding  
9 his or her child, provided that the parent or legal guardian agreed  
10 to submit fingerprint images to obtain criminal history information  
11 as part of the case plan. The court shall also determine whether  
12 reasonable services that were designed to aid the parent or legal  
13 guardian to overcome the problems that led to the initial removal  
14 and continued custody of the child have been provided or offered  
15 to the parent or legal guardian.

16 (B) The court shall also consider whether the child can be  
17 returned to the custody of his or her parent who is enrolled in a  
18 certified substance abuse treatment facility that allows a dependent  
19 child to reside with his or her parent. The fact that the parent is  
20 enrolled in a certified substance abuse treatment facility shall not  
21 be, for that reason alone, prima facie evidence of detriment. The  
22 failure of the parent or legal guardian to participate regularly and  
23 make substantive progress in court-ordered treatment programs  
24 shall be prima facie evidence that return would be detrimental.

25 (C) In making its determination, the court shall review and  
26 consider the social worker's report and recommendations and the  
27 report and recommendations of any child advocate appointed  
28 pursuant to Section 356.5, shall consider the efforts or progress,  
29 or both, demonstrated by the parent or legal guardian and the extent  
30 to which he or she availed himself or herself of services provided,  
31 taking into account the particular barriers to a minor parent or a  
32 nonminor dependent parent, or an incarcerated, institutionalized,  
33 detained, or deported parent's or legal guardian's access to those  
34 court-mandated services and ability to maintain contact with his  
35 or her child, and shall make appropriate findings pursuant to  
36 subdivision (a) of Section 366.

37 (D) For each youth 16 years of age and older, the court shall  
38 also determine whether services have been made available to assist  
39 him or her in making the transition from foster care to successful  
40 adulthood.

~~(2) Regardless of whether the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify in writing the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.~~

~~(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:~~

~~(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:~~

~~(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.~~

~~(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.~~

~~(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment~~

1 plan and to provide for the child's safety, protection, physical and  
2 emotional well-being, and special needs.

3 (i) For purposes of this subdivision, the court's decision to  
4 continue the case based on a finding or substantial probability that  
5 the child will be returned to the physical custody of his or her  
6 parent or legal guardian is a compelling reason for determining  
7 that a hearing held pursuant to Section 366.26 is not in the best  
8 interests of the child.

9 (ii) The court shall inform the parent or legal guardian that if  
10 the child cannot be returned home by the next permanency review  
11 hearing, a proceeding pursuant to Section 366.26 may be instituted.  
12 The court shall not order that a hearing pursuant to Section 366.26  
13 be held unless there is clear and convincing evidence that  
14 reasonable services have been provided or offered to the parent or  
15 legal guardian.

16 (2) Continue the case for up to six months for a permanency  
17 review hearing, provided that the hearing shall occur within 18  
18 months of the date the child was originally taken from the physical  
19 custody of his or her parent or legal guardian, if the parent has  
20 been arrested and issued an immigration hold, detained by the  
21 United States Department of Homeland Security, or deported to  
22 his or her country of origin, and the court determines either that  
23 there is a substantial probability that the child will be returned to  
24 the physical custody of his or her parent or legal guardian and  
25 safely maintained in the home within the extended period of time  
26 or that reasonable services have not been provided to the parent  
27 or legal guardian.

28 (3) For purposes of paragraph (2), in order to find a substantial  
29 probability that the child will be returned to the physical custody  
30 of his or her parent or legal guardian and safely maintained in the  
31 home within the extended period of time, the court shall find all  
32 of the following:

33 (A) The parent or legal guardian has consistently and regularly  
34 contacted and visited with the child, taking into account any  
35 particular barriers to a parent's ability to maintain contact with his  
36 or her child due to the parent's arrest and receipt of an immigration  
37 hold, detention by the United States Department of Homeland  
38 Security, or deportation.

1     ~~(B) The parent or legal guardian has made significant progress~~  
2     ~~in resolving the problems that led to the child's removal from the~~  
3     ~~home.~~

4     ~~(C) The parent or legal guardian has demonstrated the capacity~~  
5     ~~or ability both to complete the objectives of his or her treatment~~  
6     ~~plan and to provide for the child's safety, protection, physical and~~  
7     ~~emotional well-being, and special needs.~~

8     ~~(4) Order that a hearing be held within 120 days, pursuant to~~  
9     ~~Section 366.26, but only if the court does not continue the case to~~  
10    ~~the permanency planning review hearing and there is clear and~~  
11    ~~convincing evidence that reasonable services have been provided~~  
12    ~~or offered to the parents or legal guardians. On and after January~~  
13    ~~1, 2012, a hearing pursuant to Section 366.26 shall not be ordered~~  
14    ~~if the child is a nonminor dependent, unless the nonminor~~  
15    ~~dependent is an Indian child and tribal customary adoption is~~  
16    ~~recommended as the permanent plan.~~

17    ~~(5) Order that the child remain in foster care, but only if the~~  
18    ~~court finds by clear and convincing evidence, based upon the~~  
19    ~~evidence already presented to it, including a recommendation by~~  
20    ~~the State Department of Social Services when it is acting as an~~  
21    ~~adoption agency or by a county adoption agency, that there is a~~  
22    ~~compelling reason for determining that a hearing held pursuant to~~  
23    ~~Section 366.26 is not in the best interests of the child because the~~  
24    ~~child is not a proper subject for adoption and has no one willing~~  
25    ~~to accept legal guardianship as of the hearing date. For purposes~~  
26    ~~of this section, a recommendation by the State Department of~~  
27    ~~Social Services when it is acting as an adoption agency or by a~~  
28    ~~county adoption agency that adoption is not in the best interests~~  
29    ~~of the child shall constitute a compelling reason for the court's~~  
30    ~~determination. That recommendation shall be based on the present~~  
31    ~~circumstances of the child and shall not preclude a different~~  
32    ~~recommendation at a later date if the child's circumstances change.~~  
33    ~~On and after January 1, 2012, the nonminor dependent's legal~~  
34    ~~status as an adult is in and of itself a compelling reason not to hold~~  
35    ~~a hearing pursuant to Section 366.26. The court may order that a~~  
36    ~~nonminor dependent who otherwise is eligible pursuant to Section~~  
37    ~~11403 remain in a planned, permanent living arrangement.~~

38    ~~(A) The court shall make factual findings identifying any~~  
39    ~~barriers to achieving the permanent plan as of the hearing date.~~  
40    ~~When the child is under 16 years of age, the court shall order a~~

1 permanent plan of return home, adoption, tribal customary adoption  
2 in the case of an Indian child, legal guardianship, or placement  
3 with a fit and willing relative, as appropriate. When the child is  
4 16 years of age or older, or is a nonminor dependent, and no other  
5 permanent plan is appropriate at the time of the hearing, the court  
6 may order another planned permanent living arrangement, as  
7 described in paragraph (2) of subdivision (i) of Section 16501.

8 (B) If the court orders that a child who is 10 years of age or  
9 older remain in foster care, the court shall determine whether the  
10 agency has made reasonable efforts to maintain the child's  
11 relationships with individuals other than the child's siblings who  
12 are important to the child, consistent with the child's best interests,  
13 and may make any appropriate order to ensure that those  
14 relationships are maintained.

15 (C) If the child is not returned to his or her parent or legal  
16 guardian, the court shall consider, and state for the record, in-state  
17 and out-of-state options for permanent placement. If the child is  
18 placed out of the state, the court shall make a determination  
19 whether the out-of-state placement continues to be appropriate and  
20 in the best interests of the child.

21 (h) In any case in which the court orders that a hearing pursuant  
22 to Section 366.26 shall be held, it shall also order the termination  
23 of reunification services to the parent or legal guardian. The court  
24 shall continue to permit the parent or legal guardian to visit the  
25 child pending the hearing unless it finds that visitation would be  
26 detrimental to the child. The court shall make any other appropriate  
27 orders to enable the child to maintain relationships with individuals,  
28 other than the child's siblings, who are important to the child,  
29 consistent with the child's best interests. When the court orders a  
30 termination of reunification services to the parent or legal guardian,  
31 it shall also order that the child's caregiver receive the child's birth  
32 certificate in accordance with Sections 16010.4 and 16010.5.  
33 Additionally, when the court orders a termination of reunification  
34 services to the parent or legal guardian, it shall order, when  
35 appropriate, that a child who is 16 years of age or older receive  
36 his or her birth certificate.

37 (i) (1) Whenever a court orders that a hearing pursuant to  
38 Section 366.26, including, when, in consultation with the child's  
39 tribe, tribal customary adoption is recommended, shall be held, it  
40 shall direct the agency supervising the child and the county

1 adoption agency, or the State Department of Social Services when  
2 it is acting as an adoption agency, to prepare an assessment that  
3 shall include:

4 (A) Current search efforts for an absent parent or parents or  
5 legal guardians.

6 (B) A review of the amount of and nature of any contact between  
7 the child and his or her parents or legal guardians and other  
8 members of his or her extended family since the time of placement.  
9 Although the extended family of each child shall be reviewed on  
10 a case-by-case basis, "extended family" for the purpose of this  
11 subparagraph shall include, but not be limited to, the child's  
12 siblings, grandparents, aunts, and uncles.

13 (C) An evaluation of the child's medical, developmental,  
14 scholastic, mental, and emotional status.

15 (D) A preliminary assessment of the eligibility and commitment  
16 of any identified prospective adoptive parent or legal guardian,  
17 including the prospective tribal customary adoptive parent,  
18 particularly the caretaker, to include a social history including  
19 screening for criminal records and prior referrals for child abuse  
20 or neglect, the capability to meet the child's needs, and the  
21 understanding of the legal and financial rights and responsibilities  
22 of adoption and guardianship. If a proposed guardian is a relative  
23 of the minor, the assessment shall also consider, but need not be  
24 limited to, all of the factors specified in subdivision (a) of Section  
25 361.3 and in Section 361.4.

26 (E) The relationship of the child to any identified prospective  
27 adoptive parent or legal guardian, the duration and character of  
28 the relationship, the degree of attachment of the child to the  
29 prospective relative guardian or adoptive parent, the relative's or  
30 adoptive parent's strong commitment to caring permanently for  
31 the child, the motivation for seeking adoption or guardianship, a  
32 statement from the child concerning placement and the adoption  
33 or guardianship, and whether the child, if over 12 years of age,  
34 has been consulted about the proposed relative guardianship  
35 arrangements, unless the child's age or physical, emotional, or  
36 other condition precludes his or her meaningful response, and if  
37 so, a description of the condition.

38 (F) A description of efforts to be made to identify a prospective  
39 adoptive parent or legal guardian, including, but not limited to,

1 child-specific recruitment and listing on an adoption exchange  
2 within the state or out of the state.

3 (G) An analysis of the likelihood that the child will be adopted  
4 if parental rights are terminated.

5 (H) In the case of an Indian child, in addition to subparagraphs  
6 (A) to (G), inclusive, an assessment of the likelihood that the child  
7 will be adopted, when, in consultation with the child's tribe, a  
8 tribal customary adoption, as defined in Section 366.24, is  
9 recommended. If tribal customary adoption is recommended, the  
10 assessment shall include an analysis of both of the following:

11 (i) Whether tribal customary adoption would or would not be  
12 detrimental to the Indian child and the reasons for reaching that  
13 conclusion.

14 (ii) Whether the Indian child cannot or should not be returned  
15 to the home of the Indian parent or Indian custodian and the reasons  
16 for reaching that conclusion.

17 (2) (A) A relative caregiver's preference for legal guardianship  
18 over adoption, if it is due to circumstances that do not include an  
19 unwillingness to accept legal or financial responsibility for the  
20 child, shall not constitute the sole basis for recommending removal  
21 of the child from the relative caregiver for purposes of adoptive  
22 placement.

23 (B) Regardless of his or her immigration status, a relative  
24 caregiver shall be given information regarding the permanency  
25 options of guardianship and adoption, including the long-term  
26 benefits and consequences of each option, prior to establishing  
27 legal guardianship or pursuing adoption. If the proposed permanent  
28 plan is guardianship with an approved relative caregiver for a  
29 minor eligible for aid under the Kin-GAP Program, as provided  
30 for in Article 4.7 (commencing with Section 11385) of Chapter 2  
31 of Part 3 of Division 9, the relative caregiver shall be informed  
32 about the terms and conditions of the negotiated agreement  
33 pursuant to Section 11387 and shall agree to its execution prior to  
34 the hearing held pursuant to Section 366.26. A copy of the executed  
35 negotiated agreement shall be attached to the assessment.

36 (j) If, at any hearing held pursuant to Section 366.26, a  
37 guardianship is established for the minor with an approved relative  
38 caregiver, and juvenile court dependency is subsequently  
39 dismissed, the minor shall be eligible for aid under the Kin-GAP  
40 Program, as provided for in Article 4.5 (commencing with Section

~~11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.~~

~~(k) As used in this section, “relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, “relative” as used in this section has the same meaning as “relative” as defined in subdivision (c) of Section 11391.~~

~~(l) For purposes of this section, evidence of any of the following circumstances shall not, in and of itself, be deemed a failure to provide or offer reasonable services:~~

~~(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.~~

~~(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.~~

~~(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.~~

~~SEC. 2. Section 366.22 of the Welfare and Institutions Code is amended to read:~~

~~366.22. (a) (1) If a case has been continued pursuant to paragraph (1) or (2) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of~~



1 Section 16504.5, of the parent or legal guardian subsequent to the  
2 child's removal, to the extent that the criminal record is  
3 substantially related to the welfare of the child or the parent's or  
4 legal guardian's ability to exercise custody and control regarding  
5 his or her child, provided that the parent or legal guardian agreed  
6 to submit fingerprint images to obtain criminal history information  
7 as part of the case plan. The court shall also consider whether the  
8 child can be returned to the custody of his or her parent who is  
9 enrolled in a certified substance abuse treatment facility that allows  
10 a dependent child to reside with his or her parent. The fact that the  
11 parent is enrolled in a certified substance abuse treatment facility  
12 shall not be, for that reason alone, prima facie evidence of  
13 detriment. The failure of the parent or legal guardian to participate  
14 regularly and make substantive progress in court-ordered treatment  
15 programs shall be prima facie evidence that return would be  
16 detrimental. In making its determination, the court shall review  
17 and consider the social worker's report and recommendations and  
18 the report and recommendations of any child advocate appointed  
19 pursuant to Section 356.5; shall consider the efforts or progress,  
20 or both, demonstrated by the parent or legal guardian and the extent  
21 to which he or she availed himself or herself of services provided;  
22 taking into account the particular barriers of a minor parent or a  
23 nonminor dependent parent, or an incarcerated or institutionalized  
24 parent's or legal guardian's access to those court-mandated services  
25 and ability to maintain contact with his or her child; and shall make  
26 appropriate findings pursuant to subdivision (a) of Section 366.

27 (2) Whether or not the child is returned to his or her parent or  
28 legal guardian, the court shall specify in writing the factual basis  
29 for its decision. If the child is not returned to a parent or legal  
30 guardian, the court shall specify the factual basis for its conclusion  
31 that return would be detrimental. If the child is not returned to his  
32 or her parent or legal guardian, the court shall consider, and state  
33 for the record, in-state and out-of-state options for the child's  
34 permanent placement. If the child is placed out of the state, the  
35 court shall make a determination whether the out-of-state placement  
36 continues to be appropriate and in the best interests of the child.

37 (3) Unless the conditions in subdivision (b) are met and the  
38 child is not returned to a parent or legal guardian at the permanency  
39 review hearing, the court shall order that a hearing be held pursuant  
40 to Section 366.26 in order to determine whether adoption, or, in

1 the case of an Indian child, in consultation with the child's tribe,  
2 tribal customary adoption, guardianship, or continued placement  
3 in foster care is the most appropriate plan for the child. On and  
4 after January 1, 2012, a hearing pursuant to Section 366.26 shall  
5 not be ordered if the child is a nonminor dependent, unless the  
6 nonminor dependent is an Indian child, and tribal customary  
7 adoption is recommended as the permanent plan. However, if the  
8 court finds by clear and convincing evidence, based on the evidence  
9 already presented to it, including a recommendation by the State  
10 Department of Social Services when it is acting as an adoption  
11 agency or by a county adoption agency, that there is a compelling  
12 reason, as described in paragraph (5) of subdivision (g) of Section  
13 366.21, for determining that a hearing held under Section 366.26  
14 is not in the best interests of the child because the child is not a  
15 proper subject for adoption and has no one willing to accept legal  
16 guardianship as of the hearing date, the court may, only under  
17 these circumstances, order that the child remain in foster care with  
18 a permanent plan of return home, adoption, tribal customary  
19 adoption in the case of an Indian child, legal guardianship, or  
20 placement with a fit and willing relative, as appropriate. If the  
21 child is 16 years of age or older or is a nonminor dependent, and  
22 no other permanent plan is appropriate at the time of the hearing,  
23 the court may order another planned permanent living arrangement,  
24 as described in paragraph (2) of subdivision (i) of Section 16501.  
25 The court shall make factual findings identifying any barriers to  
26 achieving the permanent plan as of the hearing date. On and after  
27 January 1, 2012, the nonminor dependent's legal status as an adult  
28 is in and of itself a compelling reason not to hold a hearing pursuant  
29 to Section 366.26. The court may order that a nonminor dependent  
30 who otherwise is eligible pursuant to Section 11403 remain in a  
31 planned, permanent living arrangement. If the court orders that a  
32 child who is 10 years of age or older remain in foster care, the  
33 court shall determine whether the agency has made reasonable  
34 efforts to maintain the child's relationships with individuals other  
35 than the child's siblings who are important to the child, consistent  
36 with the child's best interests, and may make any appropriate order  
37 to ensure that those relationships are maintained. The hearing shall  
38 be held no later than 120 days from the date of the permanency  
39 review hearing. The court shall also order termination of  
40 reunification services to the parent or legal guardian. The court

1 shall continue to permit the parent or legal guardian to visit the  
2 child unless it finds that visitation would be detrimental to the  
3 child. The court shall determine whether reasonable services have  
4 been offered or provided to the parent or legal guardian. For  
5 purposes of this subdivision, evidence of any of the following  
6 circumstances shall not, in and of themselves, be deemed a failure  
7 to provide or offer reasonable services:

8 (A) The child has been placed with a foster family that is eligible  
9 to adopt a child, or has been placed in a preadoptive home.

10 (B) The case plan includes services to make and finalize a  
11 permanent placement for the child if efforts to reunify fail.

12 (C) Services to make and finalize a permanent placement for  
13 the child, if efforts to reunify fail, are provided concurrently with  
14 services to reunify the family.

15 (b) (1) If the child is not returned to a parent or legal guardian  
16 at the permanency review hearing and the court determines by  
17 clear and convincing evidence that the best interests of the child  
18 would be met by the provision of additional reunification services  
19 to a parent or legal guardian who is making significant and  
20 consistent progress in a court-ordered residential substance abuse  
21 treatment program, a parent who was either a minor parent or a  
22 nonminor dependent parent at the time of the initial hearing making  
23 significant and consistent progress in establishing a safe home for  
24 the child's return, or a parent recently discharged from  
25 incarceration, institutionalization, or the custody of the United  
26 States Department of Homeland Security and making significant  
27 and consistent progress in establishing a safe home for the child's  
28 return, the court may continue the case for up to six months for a  
29 subsequent permanency review hearing, provided that the hearing  
30 shall occur within 24 months of the date the child was originally  
31 taken from the physical custody of his or her parent or legal  
32 guardian. The court shall continue the case only if it finds that  
33 there is a substantial probability that the child will be returned to  
34 the physical custody of his or her parent or legal guardian and  
35 safely maintained in the home within the extended period of time  
36 or that reasonable services have not been provided to the parent  
37 or legal guardian. For the purposes of this section, in order to find  
38 a substantial probability that the child will be returned to the  
39 physical custody of his or her parent or legal guardian and safely

1 maintained in the home within the extended period of time, the  
2 court shall be required to find all of the following:

3 (A) That the parent or legal guardian has consistently and  
4 regularly contacted and visited with the child.

5 (B) That the parent or legal guardian has made significant and  
6 consistent progress in the prior 18 months in resolving problems  
7 that led to the child's removal from the home.

8 (C) The parent or legal guardian has demonstrated the capacity  
9 and ability both to complete the objectives of his or her substance  
10 abuse treatment plan as evidenced by reports from a substance  
11 abuse provider as applicable, or complete a treatment plan  
12 postdischarge from incarceration, institutionalization, or detention,  
13 or following deportation to his or her country of origin and his or  
14 her return to the United States, and to provide for the child's safety,  
15 protection, physical and emotional well-being, and special needs.

16 (2) For purposes of this subdivision, the court's decision to  
17 continue the case based on a finding or substantial probability that  
18 the child will be returned to the physical custody of his or her  
19 parent or legal guardian is a compelling reason for determining  
20 that a hearing held pursuant to Section 366.26 is not in the best  
21 interests of the child.

22 (3) The court shall inform the parent or legal guardian that if  
23 the child cannot be returned home by the subsequent permanency  
24 review hearing, a proceeding pursuant to Section 366.26 may be  
25 instituted. The court shall not order that a hearing pursuant to  
26 Section 366.26 be held unless there is clear and convincing  
27 evidence that reasonable services have been provided or offered  
28 to the parent or legal guardian.

29 (e) (1) Whenever a court orders that a hearing pursuant to  
30 Section 366.26, including when a tribal customary adoption is  
31 recommended, shall be held, it shall direct the agency supervising  
32 the child and the county adoption agency, or the State Department  
33 of Social Services when it is acting as an adoption agency, to  
34 prepare an assessment that shall include:

35 (A) Current search efforts for an absent parent or parents.

36 (B) A review of the amount of and nature of any contact between  
37 the child and his or her parents and other members of his or her  
38 extended family since the time of placement. Although the  
39 extended family of each child shall be reviewed on a case-by-case  
40 basis, "extended family" for the purposes of this subparagraph

1 shall include, but not be limited to, the child's siblings,  
2 grandparents, aunts, and uncles.

3 (C) An evaluation of the child's medical, developmental,  
4 scholastic, mental, and emotional status.

5 (D) A preliminary assessment of the eligibility and commitment  
6 of any identified prospective adoptive parent or legal guardian,  
7 particularly the caretaker, to include a social history including  
8 screening for criminal records and prior referrals for child abuse  
9 or neglect, the capability to meet the child's needs, and the  
10 understanding of the legal and financial rights and responsibilities  
11 of adoption and guardianship. If a proposed legal guardian is a  
12 relative of the minor, the assessment shall also consider, but need  
13 not be limited to, all of the factors specified in subdivision (a) of  
14 Section 361.3 and Section 361.4.

15 (E) The relationship of the child to any identified prospective  
16 adoptive parent or legal guardian, the duration and character of  
17 the relationship, the degree of attachment of the child to the  
18 prospective relative guardian or adoptive parent, the relative's or  
19 adoptive parent's strong commitment to caring permanently for  
20 the child, the motivation for seeking adoption or legal guardianship,  
21 a statement from the child concerning placement and the adoption  
22 or legal guardianship, and whether the child, if over 12 years of  
23 age, has been consulted about the proposed relative guardianship  
24 arrangements, unless the child's age or physical, emotional, or  
25 other condition precludes his or her meaningful response, and if  
26 so, a description of the condition.

27 (F) An analysis of the likelihood that the child will be adopted  
28 if parental rights are terminated.

29 (G) In the case of an Indian child, in addition to subparagraphs  
30 (A) to (F), inclusive, an assessment of the likelihood that the child  
31 will be adopted, when, in consultation with the child's tribe, a  
32 tribal customary adoption, as defined in Section 366.24, is  
33 recommended. If tribal customary adoption is recommended, the  
34 assessment shall include an analysis of both of the following:

35 (i) Whether tribal customary adoption would or would not be  
36 detrimental to the Indian child and the reasons for reaching that  
37 conclusion.

38 (ii) Whether the Indian child cannot or should not be returned  
39 to the home of the Indian parent or Indian custodian and the reasons  
40 for reaching that conclusion.

~~(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.~~

~~(B) Regardless of his or her immigration status, a relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, the relative caregiver shall be informed about the terms and conditions of the negotiated agreement pursuant to Section 11387 and shall agree to its execution prior to the hearing held pursuant to Section 366.26. A copy of the executed negotiated agreement shall be attached to the assessment.~~

~~(d) If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with an approved relative caregiver, and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385), as applicable, of Chapter 2 of Part 3 of Division 9.~~

~~(e) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, as provided for in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9, "relative" as used in this section has the same meaning as "relative" as defined in subdivision (c) of Section 11391.~~

~~SEC. 3. Section 366.25 of the Welfare and Institutions Code is amended to read:~~

1     ~~366.25.—(a) (1) If a case has been continued pursuant to~~  
2 ~~subdivision (b) of Section 366.22, the subsequent permanency~~  
3 ~~review hearing shall occur within 24 months after the date the~~  
4 ~~child was originally removed from the physical custody of his or~~  
5 ~~her parent or legal guardian. After considering the relevant and~~  
6 ~~admissible evidence, the court shall order the return of the child~~  
7 ~~to the physical custody of his or her parent or legal guardian unless~~  
8 ~~the court finds, by a preponderance of the evidence, that the return~~  
9 ~~of the child to his or her parent or legal guardian would create a~~  
10 ~~substantial risk of detriment to the safety, protection, or physical~~  
11 ~~or emotional well-being of the child. The social worker shall have~~  
12 ~~the burden of establishing that detriment. At the subsequent~~  
13 ~~permanency review hearing, the court shall consider the criminal~~  
14 ~~history, obtained pursuant to paragraph (1) of subdivision (f) of~~  
15 ~~Section 16504.5, of the parent or legal guardian subsequent to the~~  
16 ~~child's removal to the extent that the criminal record is substantially~~  
17 ~~related to the welfare of the child or parent's or legal guardian's~~  
18 ~~ability to exercise custody and control regarding his or her child~~  
19 ~~provided that the parent or legal guardian agreed to submit~~  
20 ~~fingerprint images to obtain criminal history information as part~~  
21 ~~of the case plan. The court shall also consider whether the child~~  
22 ~~can be returned to the custody of a parent who is enrolled in a~~  
23 ~~certified substance abuse treatment facility that allows a dependent~~  
24 ~~child to reside with his or her parent. The fact that the parent is~~  
25 ~~enrolled in a certified substance abuse treatment facility shall not~~  
26 ~~be, for that reason alone, prima facie evidence of detriment. The~~  
27 ~~failure of the parent or legal guardian to participate regularly and~~  
28 ~~make substantive progress in court-ordered treatment programs~~  
29 ~~shall be prima facie evidence that return would be detrimental. In~~  
30 ~~making its determination, the court shall review and consider the~~  
31 ~~social worker's report and recommendations and the report and~~  
32 ~~recommendations of any child advocate appointed pursuant to~~  
33 ~~Section 356.5; shall consider the efforts or progress, or both,~~  
34 ~~demonstrated by the parent or legal guardian and the extent to~~  
35 ~~which he or she availed himself or herself of services provided;~~  
36 ~~and shall make appropriate findings pursuant to subdivision (a) of~~  
37 ~~Section 366.~~

38     ~~(2) Whether or not the child is returned to his or her parent or~~  
39 ~~legal guardian, the court shall specify in writing the factual basis~~  
40 ~~for its decision. If the child is not returned to a parent or legal~~

guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. If the child is not returned to his or her parent or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, or, in the case of an Indian child, tribal customary adoption, guardianship, or, in the case of a child 16 years of age or older when no other permanent plan is appropriate, another planned permanent living arrangement is the most appropriate plan for the child. On and after January 1, 2012, a hearing pursuant to Section 366.26 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a county adoption agency, that there is a compelling reason, as described in paragraph (5) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship as of the hearing date, then the court may, only under these circumstances, order that the child remain in foster care with a permanent plan of return home, adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate. If the child is 16 years of age or older or is a nonminor dependent, and no other permanent plan is appropriate at the time of the hearing, the court may order another planned permanent living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501. The court shall make factual findings identifying any barriers to achieving the permanent plan as of the hearing date. On and after January 1, 2012, the nonminor dependent's legal status as an adult



1 is in and of itself a compelling reason not to hold a hearing pursuant  
2 to Section 366.26. The court may order that a nonminor dependent  
3 who otherwise is eligible pursuant to Section 11403 remain in a  
4 planned, permanent living arrangement. If the court orders that a  
5 child who is 10 years of age or older remain in foster care, the  
6 court shall determine whether the agency has made reasonable  
7 efforts to maintain the child's relationships with individuals other  
8 than the child's siblings who are important to the child, consistent  
9 with the child's best interests, and may make any appropriate order  
10 to ensure that those relationships are maintained. The hearing shall  
11 be held no later than 120 days from the date of the subsequent  
12 permanency review hearing. The court shall also order termination  
13 of reunification services to the parent or legal guardian. The court  
14 shall continue to permit the parent or legal guardian to visit the  
15 child unless it finds that visitation would be detrimental to the  
16 child. The court shall determine whether reasonable services have  
17 been offered or provided to the parent or legal guardian. For  
18 purposes of this paragraph, evidence of any of the following  
19 circumstances shall not, in and of themselves, be deemed a failure  
20 to provide or offer reasonable services:

21 (A) The child has been placed with a foster family that is eligible  
22 to adopt a child, or has been placed in a preadoptive home.

23 (B) The case plan includes services to make and finalize a  
24 permanent placement for the child if efforts to reunify fail.

25 (C) Services to make and finalize a permanent placement for  
26 the child, if efforts to reunify fail, are provided concurrently with  
27 services to reunify the family.

28 (b) (1) Whenever a court orders that a hearing pursuant to  
29 Section 366.26 shall be held, it shall direct the agency supervising  
30 the child and the county adoption agency, or the State Department  
31 of Social Services when it is acting as an adoption agency, to  
32 prepare an assessment that shall include:

33 (A) Current search efforts for an absent parent or parents.

34 (B) A review of the amount of, and nature of, any contact  
35 between the child and his or her parents and other members of his  
36 or her extended family since the time of placement. Although the  
37 extended family of each child shall be reviewed on a case-by-case  
38 basis, "extended family" for the purposes of this paragraph shall  
39 include, but not be limited to, the child's siblings, grandparents,  
40 aunts, and uncles.

1 ~~(C) An evaluation of the child's medical, developmental,~~  
2 ~~scholastic, mental, and emotional status.~~

3 ~~(D) A preliminary assessment of the eligibility and commitment~~  
4 ~~of any identified prospective adoptive parent or legal guardian,~~  
5 ~~including a prospective tribal customary adoptive parent,~~  
6 ~~particularly the caretaker, to include a social history including~~  
7 ~~screening for criminal records and prior referrals for child abuse~~  
8 ~~or neglect, the capability to meet the child's needs, and the~~  
9 ~~understanding of the legal and financial rights and responsibilities~~  
10 ~~of adoption and guardianship. If a proposed legal guardian is a~~  
11 ~~relative of the minor, the assessment shall also consider, but need~~  
12 ~~not be limited to, all of the factors specified in subdivision (a) of~~  
13 ~~Section 361.3 and in Section 361.4.~~

14 ~~(E) The relationship of the child to any identified prospective~~  
15 ~~adoptive parent or legal guardian, including a prospective tribal~~  
16 ~~customary adoptive parent, the duration and character of the~~  
17 ~~relationship, the degree of attachment of the child to the prospective~~  
18 ~~relative guardian or adoptive parent, the relative's or adoptive~~  
19 ~~parent's strong commitment to caring permanently for the child,~~  
20 ~~the motivation for seeking adoption or legal guardianship, a~~  
21 ~~statement from the child concerning placement and the adoption~~  
22 ~~or legal guardianship, and whether the child, if over 12 years of~~  
23 ~~age, has been consulted about the proposed relative guardianship~~  
24 ~~arrangements, unless the child's age or physical, emotional, or~~  
25 ~~other condition precludes his or her meaningful response, and if~~  
26 ~~so, a description of the condition.~~

27 ~~(F) An analysis of the likelihood that the child will be adopted~~  
28 ~~if parental rights are terminated.~~

29 ~~(G) In the case of an Indian child, in addition to subparagraphs~~  
30 ~~(A) to (F), inclusive, an assessment of the likelihood that the child~~  
31 ~~will be adopted, when, in consultation with the child's tribe, a~~  
32 ~~tribal customary adoption, as defined in Section 366.24, is~~  
33 ~~recommended. If tribal customary adoption is recommended, the~~  
34 ~~assessment shall include an analysis of both of the following:~~

35 ~~(i) Whether tribal customary adoption would or would not be~~  
36 ~~detrimental to the Indian child and the reasons for reaching that~~  
37 ~~conclusion.~~

38 ~~(ii) Whether the Indian child cannot or should not be returned~~  
39 ~~to the home of the Indian parent or Indian custodian and the reasons~~  
40 ~~for reaching that conclusion.~~

1     ~~(2) (A) A relative caregiver's preference for legal guardianship~~  
2 ~~over adoption, if it is due to circumstances that do not include an~~  
3 ~~unwillingness to accept legal or financial responsibility for the~~  
4 ~~child, shall not constitute the sole basis for recommending removal~~  
5 ~~of the child from the relative caregiver for purposes of adoptive~~  
6 ~~placement.~~

7     ~~(B) Regardless of his or her immigration status, a relative~~  
8 ~~caregiver shall be given information regarding the permanency~~  
9 ~~options of guardianship and adoption, including the long-term~~  
10 ~~benefits and consequences of each option, prior to establishing~~  
11 ~~legal guardianship or pursuing adoption. If the proposed permanent~~  
12 ~~plan is guardianship with an approved relative caregiver for a~~  
13 ~~minor eligible for aid under the Kin-GAP Program, as provided~~  
14 ~~for in Article 4.7 (commencing with Section 11385) of Chapter 2~~  
15 ~~of Part 3 of Division 9, the relative caregiver shall be informed~~  
16 ~~about the terms and conditions of the negotiated agreement~~  
17 ~~pursuant to Section 11387 and shall agree to its execution prior to~~  
18 ~~the hearing held pursuant to Section 366.26. A copy of the executed~~  
19 ~~negotiated agreement shall be attached to the assessment.~~

20     ~~(c) If, at any hearing held pursuant to Section 366.26, a~~  
21 ~~guardianship is established for the minor with an approved relative~~  
22 ~~caregiver, and juvenile court dependency is subsequently~~  
23 ~~dismissed, the minor shall be eligible for aid under the Kin-GAP~~  
24 ~~Program, as provided for in Article 4.5 (commencing with Section~~  
25 ~~11360) or Article 4.7 (commencing with Section 11385), as~~  
26 ~~applicable, of Chapter 2 of Part 3 of Division 9.~~

27     ~~(d) As used in this section, "relative" means an adult who is~~  
28 ~~related to the minor by blood, adoption, or affinity within the fifth~~  
29 ~~degree of kinship, including stepparents, stepsiblings, and all~~  
30 ~~relatives whose status is preceded by the words "great,"~~  
31 ~~"great-great," or "grand," or the spouse of any of those persons~~  
32 ~~even if the marriage was terminated by death or dissolution. If the~~  
33 ~~proposed permanent plan is guardianship with an approved relative~~  
34 ~~caregiver for a minor eligible for aid under the Kin-GAP Program,~~  
35 ~~as provided in Article 4.7 (commencing with Section 11385) of~~  
36 ~~Chapter 2 of Part 3 of Division 9, "relative" as used in this section~~  
37 ~~has the same meaning as "relative" as defined in subdivision (c)~~  
38 ~~of Section 11391.~~

39     ~~SEC. 4. Section 366.26 of the Welfare and Institutions Code~~  
40 ~~is amended to read:~~

~~366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8616.5 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.~~

~~(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:~~

~~(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.~~

~~(2) Order, without termination of parental rights, the plan of tribal customary adoption, as described in Section 366.24, through tribal custom, traditions, or law of the Indian child's tribe, and upon the court affording the tribal customary adoption order full faith and credit at the continued selection and implementation hearing, order that a hearing be set pursuant to paragraph (2) of subdivision (c).~~

~~(3) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.~~

1     ~~(4) On making a finding under paragraph (3) of subdivision (c);~~  
2     ~~identify adoption or tribal customary adoption as the permanent~~  
3     ~~placement goal and order that efforts be made to locate an~~  
4     ~~appropriate adoptive family for the child within a period not to~~  
5     ~~exceed 180 days.~~

6     ~~(5) Appoint a nonrelative legal guardian for the child and order~~  
7     ~~that letters of guardianship issue.~~

8     ~~(6) Order that the child be permanently placed with a fit and~~  
9     ~~willing relative, subject to the periodic review of the juvenile court~~  
10    ~~under Section 366.3.~~

11    ~~(7) Order that the child remain in foster care, subject to the~~  
12    ~~conditions described in paragraph (4) of subdivision (c) and the~~  
13    ~~periodic review of the juvenile court under Section 366.3.~~

14    ~~In choosing among the above alternatives the court shall proceed~~  
15    ~~pursuant to subdivision (c).~~

16    ~~(c) (1) If the court determines, based on the assessment provided~~  
17    ~~as ordered under subdivision (i) of Section 366.21, subdivision (b)~~  
18    ~~of Section 366.22, or subdivision (b) of Section 366.25, and any~~  
19    ~~other relevant evidence, by a clear and convincing standard, that~~  
20    ~~it is likely the child will be adopted, the court shall terminate~~  
21    ~~parental rights and order the child placed for adoption. The fact~~  
22    ~~that the child is not yet placed in a preadoptive home nor with a~~  
23    ~~relative or foster family who is prepared to adopt the child, shall~~  
24    ~~not constitute a basis for the court to conclude that it is not likely~~  
25    ~~the child will be adopted. A finding under subdivision (b) or~~  
26    ~~paragraph (1) of subdivision (c) of Section 361.5 that reunification~~  
27    ~~services shall not be offered, under subdivision (c) of Section~~  
28    ~~366.21 that the whereabouts of a parent have been unknown for~~  
29    ~~six months or that the parent has failed to visit or contact the child~~  
30    ~~for six months, or that the parent has been convicted of a felony~~  
31    ~~indicating parental unfitness, or, under Section 366.21 or 366.22,~~  
32    ~~that the court has continued to remove the child from the custody~~  
33    ~~of the parent or guardian and has terminated reunification services;~~  
34    ~~shall constitute a sufficient basis for termination of parental rights.~~  
35    ~~Under these circumstances, the court shall terminate parental rights~~  
36    ~~unless either of the following applies:~~

37    ~~(A) The child is living with a relative who is unable or unwilling~~  
38    ~~to adopt the child because of circumstances that do not include an~~  
39    ~~unwillingness to accept legal or financial responsibility for the~~  
40    ~~child, but who is willing and capable of providing the child with~~

1 a stable and permanent environment through legal guardianship;  
2 and the removal of the child from the custody of his or her relative  
3 would be detrimental to the emotional well-being of the child. For  
4 purposes of an Indian child, “relative” shall include an “extended  
5 family member,” as defined in the federal Indian Child Welfare  
6 Act of 1978 (25 U.S.C. Sec. 1903(2)).

7 (B) The court finds a compelling reason for determining that  
8 termination would be detrimental to the child due to one or more  
9 of the following circumstances:

10 (i) The parents have maintained regular visitation and contact  
11 with the child and the child would benefit from continuing the  
12 relationship.

13 (ii) A child 12 years of age or older objects to termination of  
14 parental rights.

15 (iii) The child is placed in a residential treatment facility;  
16 adoption is unlikely or undesirable, and continuation of parental  
17 rights will not prevent finding the child a permanent family  
18 placement if the parents cannot resume custody when residential  
19 care is no longer needed.

20 (iv) The child is living with a foster parent or Indian custodian  
21 who is unable or unwilling to adopt the child because of  
22 exceptional circumstances, that do not include an unwillingness  
23 to accept legal or financial responsibility for the child, but who is  
24 willing and capable of providing the child with a stable and  
25 permanent environment and the removal of the child from the  
26 physical custody of his or her foster parent or Indian custodian  
27 would be detrimental to the emotional well-being of the child. This  
28 clause does not apply to any child who is either (I) under six years  
29 of age or (II) a member of a sibling group where at least one child  
30 is under six years of age and the siblings are, or should be,  
31 permanently placed together.

32 (v) There would be substantial interference with a child’s sibling  
33 relationship, taking into consideration the nature and extent of the  
34 relationship, including, but not limited to, whether the child was  
35 raised with a sibling in the same home, whether the child shared  
36 significant common experiences or has existing close and strong  
37 bonds with a sibling, and whether ongoing contact is in the child’s  
38 best interest, including the child’s long-term emotional interest,  
39 as compared to the benefit of legal permanence through adoption.

1     (vi) ~~The child is an Indian child and there is a compelling reason~~  
2 ~~for determining that termination of parental rights would not be~~  
3 ~~in the best interest of the child, including, but not limited to:~~

4     (I) ~~Termination of parental rights would substantially interfere~~  
5 ~~with the child's connection to his or her tribal community or the~~  
6 ~~child's tribal membership rights.~~

7     (H) ~~The child's tribe has identified guardianship, foster care~~  
8 ~~with a fit and willing relative, tribal customary adoption, or another~~  
9 ~~planned permanent living arrangement for the child.~~

10    (III) ~~The child is a nonminor dependent, and the nonminor and~~  
11 ~~the nonminor's tribe have identified tribal customary adoption for~~  
12 ~~the nonminor.~~

13    (C) ~~For purposes of subparagraph (B), in the case of tribal~~  
14 ~~customary adoptions, Section 366.24 shall apply.~~

15    (D) ~~If the court finds that termination of parental rights would~~  
16 ~~be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),~~  
17 ~~(v), or (vi), it shall state its reasons in writing and on the record.~~

18    (2) ~~The court shall not terminate parental rights if:~~

19    (A) ~~At each hearing at which the court was required to consider~~  
20 ~~reasonable efforts or services, the court has found that reasonable~~  
21 ~~efforts were not made or that reasonable services were not offered~~  
22 ~~or provided.~~

23    (B) ~~In the case of an Indian child:~~

24    (i) ~~At the hearing terminating parental rights, the court has found~~  
25 ~~that active efforts were not made as required in Section 361.7.~~

26    (ii) ~~The court does not make a determination at the hearing~~  
27 ~~terminating parental rights, supported by evidence beyond a~~  
28 ~~reasonable doubt, including testimony of one or more "qualified~~  
29 ~~expert witnesses" as defined in Section 224.6, that the continued~~  
30 ~~custody of the child by the parent is likely to result in serious~~  
31 ~~emotional or physical damage to the child.~~

32    (iii) ~~The court has ordered tribal customary adoption pursuant~~  
33 ~~to Section 366.24.~~

34    (3) ~~If the court finds that termination of parental rights would~~  
35 ~~not be detrimental to the child pursuant to paragraph (1) and that~~  
36 ~~the child has a probability for adoption but is difficult to place for~~  
37 ~~adoption and there is no identified or available prospective adoptive~~  
38 ~~parent, the court may identify adoption as the permanent placement~~  
39 ~~goal and without terminating parental rights, order that efforts be~~  
40 ~~made to locate an appropriate adoptive family for the child, within~~

1 the state or out of the state, within a period not to exceed 180 days.  
2 During this 180-day period, the public agency responsible for  
3 seeking adoptive parents for each child shall, to the extent possible,  
4 ask each child who is 10 years of age or older, to identify any  
5 individuals, other than the child's siblings, who are important to  
6 the child, in order to identify potential adoptive parents. The public  
7 agency may ask any other child to provide that information, as  
8 appropriate. During the 180-day period, the public agency shall,  
9 to the extent possible, contact other private and public adoption  
10 agencies regarding the availability of the child for adoption. During  
11 the 180-day period, the public agency shall conduct the search for  
12 adoptive parents in the same manner as prescribed for children in  
13 Sections 8708 and 8709 of the Family Code. At the expiration of  
14 this period, another hearing shall be held and the court shall  
15 proceed pursuant to paragraph (1), (2), (3), (5), or (6) of subdivision  
16 (b). For purposes of this section, a child may only be found to be  
17 difficult to place for adoption if there is no identified or available  
18 prospective adoptive parent for the child because of the child's  
19 membership in a sibling group, or the presence of a diagnosed  
20 medical, physical, or mental handicap, or the child is seven years  
21 of age or more.

22 (4) (A) If the court finds that adoption of the child or  
23 termination of parental rights is not in the best interest of the child,  
24 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or  
25 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)  
26 applies, the court shall order that the present caretakers or other  
27 appropriate persons shall become legal guardians of the child, or,  
28 in the case of an Indian child, consider a tribal customary adoption  
29 pursuant to Section 366.24. Legal guardianship shall be considered  
30 before continuing the child in foster care under any other permanent  
31 plan, if it is in the best interests of the child and if a suitable  
32 guardian can be found. If the child continues in foster care, the  
33 court shall make factual findings identifying any barriers to  
34 achieving adoption, tribal customary adoption in the case of an  
35 Indian child, legal guardianship, or placement with a fit and willing  
36 relative as of the date of the hearing. A child who is 10 years of  
37 age or older, shall be asked to identify any individuals, other than  
38 the child's siblings, who are important to the child, in order to  
39 identify potential guardians or, in the case of an Indian child,



1 prospective tribal customary adoptive parents. The agency may  
2 ask any other child to provide that information, as appropriate.

3 (B) (i) If the child is living with an approved relative who is  
4 willing and capable of providing a stable and permanent  
5 environment, but not willing to become a legal guardian as of the  
6 hearing date, the court shall order a permanent plan of placement  
7 with a fit and willing relative, and the child shall not be removed  
8 from the home if the court finds the removal would be seriously  
9 detrimental to the emotional well-being of the child because the  
10 child has substantial psychological ties to the relative caretaker.

11 (ii) If the child is living with a nonrelative caregiver who is  
12 willing and capable of providing a stable and permanent  
13 environment, but not willing to become a legal guardian as of the  
14 hearing date, the court shall order that the child remain in foster  
15 care with a permanent plan of return home, adoption, legal  
16 guardianship, or placement with a fit and willing relative, as  
17 appropriate. If the child is 16 years of age or older, or a nonminor  
18 dependent, and no other permanent plan is appropriate at the time  
19 of the hearing, the court may order another planned permanent  
20 living arrangement, as described in paragraph (2) of subdivision  
21 (i) of Section 16501. Regardless of the age of the child, the child  
22 shall not be removed from the home if the court finds the removal  
23 would be seriously detrimental to the emotional well-being of the  
24 child because the child has substantial psychological ties to the  
25 caregiver.

26 (iii) If the child is living in a group home or, on or after January  
27 1, 2017, a short-term residential treatment center, the court shall  
28 order that the child remain in foster care with a permanent plan of  
29 return home, adoption, tribal customary adoption in the case of an  
30 Indian child, legal guardianship, or placement with a fit and willing  
31 relative, as appropriate. If the child is 16 years of age or older, or  
32 a nonminor dependent, and no other permanent plan is appropriate  
33 at the time of the hearing, the court may order another planned  
34 permanent living arrangement, as described in paragraph (2) of  
35 subdivision (i) of Section 16501.

36 (C) The court shall also make an order for visitation with the  
37 parents or guardians unless the court finds by a preponderance of  
38 the evidence that the visitation would be detrimental to the physical  
39 or emotional well-being of the child.

~~(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, that placement with a fit and willing relative is not appropriate as of the hearing date, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.~~

~~The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.~~

~~(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.~~

~~(e) (1) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed~~

1 with the adoption after the appellate rights of the natural parents  
2 have been exhausted. The full report required by Section 8715 of  
3 the Family Code shall be read and considered by the court prior  
4 to the adoption and this shall be reflected in the minutes of the  
5 court. The person preparing the report may be called and examined  
6 by any party to the proceeding. It is the intent of the Legislature,  
7 pursuant to this subdivision, to give potential adoptive parents the  
8 option of filing in the juvenile court the petition for the adoption  
9 of a child who is a dependent of the juvenile court. Nothing in this  
10 section is intended to prevent the filing of a petition for adoption  
11 in any other court as permitted by law, instead of in the juvenile  
12 court.

13 (2) In the case of an Indian child, if the Indian child's tribe has  
14 elected a permanent plan of tribal customary adoption, the court,  
15 upon receiving the tribal customary adoption order will afford the  
16 tribal customary adoption order full faith and credit to the same  
17 extent that the court would afford full faith and credit to the public  
18 acts, records, judicial proceedings, and judgments of any other  
19 entity. Upon a determination that the tribal customary adoption  
20 order may be afforded full faith and credit, consistent with Section  
21 224.5, the court shall thereafter order a hearing to finalize the  
22 adoption be set upon the filing of the adoption petition. The  
23 prospective tribal customary adoptive parents and the child who  
24 is the subject of the tribal customary adoption petition shall appear  
25 before the court for the finalization hearing. The court shall  
26 thereafter issue an order of adoption pursuant to Section 366.24.

27 (3) If a child who is the subject of a finalized tribal customary  
28 adoption shows evidence of a developmental disability or mental  
29 illness as a result of conditions existing before the tribal customary  
30 adoption to the extent that the child cannot be relinquished to a  
31 licensed adoption agency on the grounds that the child is considered  
32 unadoptable, and of which condition the tribal customary adoptive  
33 parent or parents had no knowledge or notice before the entry of  
34 the tribal customary adoption order, a petition setting forth those  
35 facts may be filed by the tribal customary adoptive parent or  
36 parents with the juvenile court that granted the tribal customary  
37 adoption petition. If these facts are proved to the satisfaction of  
38 the juvenile court, it may make an order setting aside the tribal  
39 customary adoption order. The set-aside petition shall be filed  
40 within five years of the issuance of the tribal customary adoption

1 order. The court clerk shall immediately notify the child's tribe  
2 and the department in Sacramento of the petition within 60 days  
3 after the notice of filing of the petition. The department shall file  
4 a full report with the court and shall appear before the court for  
5 the purpose of representing the child. Whenever a final decree of  
6 tribal customary adoption has been vacated or set aside, the child  
7 shall be returned to the custody of the county in which the  
8 proceeding for tribal customary adoption was finalized. The  
9 biological parent or parents of the child may petition for return of  
10 custody. The disposition of the child after the court has entered an  
11 order to set aside a tribal customary adoption shall include  
12 consultation with the child's tribe.

13 (f) At the beginning of any proceeding pursuant to this section,  
14 if the child or the parents are not being represented by previously  
15 retained or appointed counsel, the court shall proceed as follows:

16 (1) In accordance with subdivision (e) of Section 317, if a child  
17 before the court is without counsel, the court shall appoint counsel  
18 unless the court finds that the child would not benefit from the  
19 appointment of counsel. The court shall state on the record its  
20 reasons for that finding.

21 (2) If a parent appears without counsel and is unable to afford  
22 counsel, the court shall appoint counsel for the parent, unless this  
23 representation is knowingly and intelligently waived. The same  
24 counsel shall not be appointed to represent both the child and his  
25 or her parent. The public defender or private counsel may be  
26 appointed as counsel for the parent.

27 (3) Private counsel appointed under this section shall receive a  
28 reasonable sum for compensation and expenses, the amount of  
29 which shall be determined by the court. The amount shall be paid  
30 by the real parties in interest, other than the child, in any  
31 proportions the court deems just. However, if the court finds that  
32 any of the real parties in interest are unable to afford counsel, the  
33 amount shall be paid out of the general fund of the county.

34 (g) The court may continue the proceeding for a period of time  
35 not to exceed 30 days as necessary to appoint counsel, and to  
36 enable counsel to become acquainted with the case.

37 (h) (1) At all proceedings under this section, the court shall  
38 consider the wishes of the child and shall act in the best interests  
39 of the child.

1     ~~(2) In accordance with Section 349, the child shall be present~~  
2     ~~in court if the child or the child's counsel so requests or the court~~  
3     ~~so orders. If the child is 10 years of age or older and is not present~~  
4     ~~at a hearing held pursuant to this section, the court shall determine~~  
5     ~~whether the minor was properly notified of his or her right to attend~~  
6     ~~the hearing and inquire as to the reason why the child is not present.~~

7     ~~(3) (A) The testimony of the child may be taken in chambers~~  
8     ~~and outside the presence of the child's parent or parents, if the~~  
9     ~~child's parent or parents are represented by counsel, the counsel~~  
10    ~~is present, and any of the following circumstances exists:~~

11    ~~(i) The court determines that testimony in chambers is necessary~~  
12    ~~to ensure truthful testimony.~~

13    ~~(ii) The child is likely to be intimidated by a formal courtroom~~  
14    ~~setting.~~

15    ~~(iii) The child is afraid to testify in front of his or her parent or~~  
16    ~~parents.~~

17    ~~(B) After testimony in chambers, the parent or parents of the~~  
18    ~~child may elect to have the court reporter read back the testimony~~  
19    ~~or have the testimony summarized by counsel for the parent or~~  
20    ~~parents.~~

21    ~~(C) The testimony of a child also may be taken in chambers and~~  
22    ~~outside the presence of the guardian or guardians of a child under~~  
23    ~~the circumstances specified in this subdivision.~~

24    ~~(i) (1) Any order of the court permanently terminating parental~~  
25    ~~rights under this section shall be conclusive and binding upon the~~  
26    ~~child, upon the parent or parents and upon all other persons who~~  
27    ~~have been served with citation by publication or otherwise as~~  
28    ~~provided in this chapter. After making the order, the juvenile court~~  
29    ~~shall have no power to set aside, change, or modify it, except as~~  
30    ~~provided in paragraph (2), but nothing in this section shall be~~  
31    ~~construed to limit the right to appeal the order.~~

32    ~~(2) A tribal customary adoption order evidencing that the Indian~~  
33    ~~child has been the subject of a tribal customary adoption shall be~~  
34    ~~afforded full faith and credit and shall have the same force and~~  
35    ~~effect as an order of adoption authorized by this section. The rights~~  
36    ~~and obligations of the parties as to the matters determined by the~~  
37    ~~Indian child's tribe shall be binding on all parties. A court shall~~  
38    ~~not order compliance with the order absent a finding that the party~~  
39    ~~seeking the enforcement participated, or attempted to participate,~~  
40    ~~in good faith, in family mediation services of the court or dispute~~

1 resolution through the tribe regarding the conflict, prior to the  
2 filing of the enforcement action.

3 ~~(3) A child who has not been adopted after the passage of at~~  
4 ~~least three years from the date the court terminated parental rights~~  
5 ~~and for whom the court has determined that adoption is no longer~~  
6 ~~the permanent plan may petition the juvenile court to reinstate~~  
7 ~~parental rights pursuant to the procedure prescribed by Section~~  
8 ~~388. The child may file the petition prior to the expiration of this~~  
9 ~~three-year period if the State Department of Social Services, county~~  
10 ~~adoption agency, or licensed adoption agency that is responsible~~  
11 ~~for custody and supervision of the child as described in subdivision~~  
12 ~~(j) and the child stipulate that the child is no longer likely to be~~  
13 ~~adopted. A child over 12 years of age shall sign the petition in the~~  
14 ~~absence of a showing of good cause as to why the child could not~~  
15 ~~do so. If it appears that the best interests of the child may be~~  
16 ~~promoted by reinstatement of parental rights, the court shall order~~  
17 ~~that a hearing be held and shall give prior notice, or cause prior~~  
18 ~~notice to be given, to the social worker or probation officer and to~~  
19 ~~the child's attorney of record, or, if there is no attorney of record~~  
20 ~~for the child, to the child, and the child's tribe, if applicable, by~~  
21 ~~means prescribed by subdivision (e) of Section 297. The court~~  
22 ~~shall order the child or the social worker or probation officer to~~  
23 ~~give prior notice of the hearing to the child's former parent or~~  
24 ~~parents whose parental rights were terminated in the manner~~  
25 ~~prescribed by subdivision (f) of Section 294 where the~~  
26 ~~recommendation is adoption. The juvenile court shall grant the~~  
27 ~~petition if it finds by clear and convincing evidence that the child~~  
28 ~~is no longer likely to be adopted and that reinstatement of parental~~  
29 ~~rights is in the child's best interest. If the court reinstates parental~~  
30 ~~rights over a child who is under 12 years of age, the court shall~~  
31 ~~specify in writing the factual basis for its findings that it is in the~~  
32 ~~best interest of the child to reinstate parental rights. This~~  
33 ~~subdivision is intended to be retroactive and applies to any child~~  
34 ~~who is under the jurisdiction of the juvenile court at the time of~~  
35 ~~the hearing regardless of the date parental rights were terminated.~~

36 ~~(j) If the court, by order or judgment, declares the child free~~  
37 ~~from the custody and control of both parents, or one parent if the~~  
38 ~~other does not have custody and control, or declares the child~~  
39 ~~eligible for tribal customary adoption, the court shall at the same~~  
40 ~~time order the child referred to the State Department of Social~~

1 Services, county adoption agency, or licensed adoption agency for  
2 adoptive placement by the agency. However, except in the case  
3 of a tribal customary adoption where there is no termination of  
4 parental rights, a petition for adoption may not be granted until  
5 the appellate rights of the natural parents have been exhausted.  
6 The State Department of Social Services, county adoption agency,  
7 or licensed adoption agency shall be responsible for the custody  
8 and supervision of the child and shall be entitled to the exclusive  
9 care and control of the child at all times until a petition for adoption  
10 or tribal customary adoption is granted, except as specified in  
11 subdivision (n). With the consent of the agency, the court may  
12 appoint a guardian of the child, who shall serve until the child is  
13 adopted.

14 (k) ~~Notwithstanding any other law, the application of any person~~  
15 ~~who, as a relative caretaker or foster parent, has cared for a~~  
16 ~~dependent child for whom the court has approved a permanent~~  
17 ~~plan for adoption, or who has been freed for adoption, shall be~~  
18 ~~given preference with respect to that child over all other~~  
19 ~~applications for adoptive placement if the agency making the~~  
20 ~~placement determines that the child has substantial emotional ties~~  
21 ~~to the relative caretaker or foster parent and removal from the~~  
22 ~~relative caretaker or foster parent would be seriously detrimental~~  
23 ~~to the child's emotional well-being.~~

24 As used in this subdivision, "preference" means that the  
25 application shall be processed and, if satisfactory, the family study  
26 shall be completed before the processing of the application of any  
27 other person for the adoptive placement of the child.

28 (l) (1) An order by the court that a hearing pursuant to this  
29 section be held is not appealable at any time unless all of the  
30 following apply:

31 (A) A petition for extraordinary writ review was filed in a timely  
32 manner.

33 (B) The petition substantively addressed the specific issues to  
34 be challenged and supported that challenge by an adequate record.

35 (C) The petition for extraordinary writ review was summarily  
36 denied or otherwise not decided on the merits.

37 (2) Failure to file a petition for extraordinary writ review within  
38 the period specified by rule, to substantively address the specific  
39 issues challenged, or to support that challenge by an adequate

1 record shall preclude subsequent review by appeal of the findings  
2 and orders made pursuant to this section.

3 ~~(3) The Judicial Council shall adopt rules of court, effective~~  
4 ~~January 1, 1995, to ensure all of the following:~~

5 ~~(A) A trial court, after issuance of an order directing a hearing~~  
6 ~~pursuant to this section be held, shall advise all parties of the~~  
7 ~~requirement of filing a petition for extraordinary writ review as~~  
8 ~~set forth in this subdivision in order to preserve any right to appeal~~  
9 ~~in these issues. This notice shall be made orally to a party if the~~  
10 ~~party is present at the time of the making of the order or by~~  
11 ~~first-class mail by the clerk of the court to the last known address~~  
12 ~~of a party not present at the time of the making of the order.~~

13 ~~(B) The prompt transmittal of the records from the trial court~~  
14 ~~to the appellate court.~~

15 ~~(C) That adequate time requirements for counsel and court~~  
16 ~~personnel exist to implement the objective of this subdivision.~~

17 ~~(D) That the parent or guardian, or their trial counsel or other~~  
18 ~~counsel, is charged with the responsibility of filing a petition for~~  
19 ~~extraordinary writ relief pursuant to this subdivision.~~

20 ~~(4) The intent of this subdivision is to do both of the following:~~

21 ~~(A) Make every reasonable attempt to achieve a substantive and~~  
22 ~~meritorious review by the appellate court within the time specified~~  
23 ~~in Sections 366.21, 366.22, and 366.25 for holding a hearing~~  
24 ~~pursuant to this section.~~

25 ~~(B) Encourage the appellate court to determine all writ petitions~~  
26 ~~filed pursuant to this subdivision on their merits.~~

27 ~~(5) This subdivision shall only apply to cases in which an order~~  
28 ~~to set a hearing pursuant to this section is issued on or after January~~  
29 ~~1, 1995.~~

30 ~~(m) Except for subdivision (j), this section shall also apply to~~  
31 ~~minors adjudged wards pursuant to Section 727.31.~~

32 ~~(n) (1) Notwithstanding Section 8704 of the Family Code or~~  
33 ~~any other law, the court, at a hearing held pursuant to this section~~  
34 ~~or anytime thereafter, may designate a current caretaker as a~~  
35 ~~prospective adoptive parent if the child has lived with the caretaker~~  
36 ~~for at least six months, the caretaker currently expresses a~~  
37 ~~commitment to adopt the child, and the caretaker has taken at least~~  
38 ~~one step to facilitate the adoption process. In determining whether~~  
39 ~~to make that designation, the court may take into consideration~~  
40 ~~whether the caretaker is listed in the preliminary assessment~~



1 prepared by the county department in accordance with subdivision  
2 (i) of Section 366.21 as an appropriate person to be considered as  
3 an adoptive parent for the child and the recommendation of the  
4 State Department of Social Services, county adoption agency, or  
5 licensed adoption agency.

6 (2) For purposes of this subdivision, steps to facilitate the  
7 adoption process include, but are not limited to, the following:

8 (A) Applying for an adoption home study.

9 (B) Cooperating with an adoption home study.

10 (C) Being designated by the court or the adoption agency as the  
11 adoptive family.

12 (D) Requesting de facto parent status.

13 (E) Signing an adoptive placement agreement.

14 (F) Engaging in discussions regarding a postadoption contact  
15 agreement.

16 (G) Working to overcome any impediments that have been  
17 identified by the State Department of Social Services, county  
18 adoption agency, or licensed adoption agency.

19 (H) Attending classes required of prospective adoptive parents.

20 (3) Prior to a change in placement and as soon as possible after  
21 a decision is made to remove a child from the home of a designated  
22 prospective adoptive parent, the agency shall notify the court, the  
23 designated prospective adoptive parent or the current caretaker, if  
24 that caretaker would have met the threshold criteria to be  
25 designated as a prospective adoptive parent pursuant to paragraph  
26 (1) on the date of service of this notice, the child's attorney, and  
27 the child, if the child is 10 years of age or older, of the proposal  
28 in the manner described in Section 16010.6.

29 (A) Within five court days or seven calendar days, whichever  
30 is longer, of the date of notification, the child, the child's attorney,  
31 or the designated prospective adoptive parent may file a petition  
32 with the court objecting to the proposal to remove the child, or the  
33 court, upon its own motion, may set a hearing regarding the  
34 proposal. The court may, for good cause, extend the filing period.  
35 A caretaker who would have met the threshold criteria to be  
36 designated as a prospective adoptive parent pursuant to paragraph  
37 (1) on the date of service of the notice of proposed removal of the  
38 child may file, together with the petition under this subparagraph,  
39 a petition for an order designating the caretaker as a prospective  
40 adoptive parent for purposes of this subdivision.

~~(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.~~

~~(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department, county adoption agency, or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).~~

~~(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.~~

~~(4) Notwithstanding paragraph (3), if the State Department of Social Services, county adoption agency, or licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not~~

1 required to provide notice prior to the removal. However, as soon  
2 as possible and not longer than two court days after the removal,  
3 the agency shall notify the court, the caretaker who is or may be  
4 a designated prospective adoptive parent, the child's attorney, and  
5 the child, if the child is 10 years of age or older, of the removal.  
6 Within five court days or seven calendar days, whichever is longer,  
7 of the date of notification of the removal, the child, the child's  
8 attorney, or the caretaker who is or may be a designated prospective  
9 adoptive parent may petition for, or the court on its own motion  
10 may set, a noticed hearing pursuant to paragraph (3). The court  
11 may, for good cause, extend the filing period.

12 (5) ~~Except as provided in subdivision (b) of Section 366.28, an~~  
13 ~~order by the court issued after a hearing pursuant to this subdivision~~  
14 ~~shall not be appealable.~~

15 (6) ~~Nothing in this section shall preclude a county child~~  
16 ~~protective services agency from fully investigating and responding~~  
17 ~~to alleged abuse or neglect of a child pursuant to Section 11165.5~~  
18 ~~of the Penal Code.~~

19 (7) ~~The Judicial Council shall prepare forms to facilitate the~~  
20 ~~filing of the petitions described in this subdivision, which shall~~  
21 ~~become effective on January 1, 2006.~~

22 SEC. 5. ~~Section 398 is added to the Welfare and Institutions~~  
23 ~~Code, to read:~~

24 398. ~~At the time a child is being considered for placement in~~  
25 ~~a foster home, the social worker shall provide to the foster parents~~  
26 ~~all of the following:~~

27 (a) ~~Notification that he or she has the right to be present at the~~  
28 ~~dispositional hearing and at any hearing thereafter at which the~~  
29 ~~status of the child is at issue.~~

30 (b) ~~Information regarding de facto parent status and the manner~~  
31 ~~in which a foster parent can apply to the juvenile court to become~~  
32 ~~a de facto parent.~~

33 (c) ~~Notification that if the child reenters foster care, the foster~~  
34 ~~parents of the child have the right to be provided written notice~~  
35 ~~from the court if the child, after being reunified with his or her~~  
36 ~~parents, is returned to the court for further dependency proceedings.~~

37 SEC. 6. ~~To the extent that this act has an overall effect of~~  
38 ~~increasing the costs already borne by a local agency for programs~~  
39 ~~or levels of service mandated by the 2011 Realignment Legislation~~  
40 ~~within the meaning of Section 36 of Article XIII of the California~~

1 ~~Constitution, it shall apply to local agencies only to the extent that~~  
2 ~~the state provides annual funding for the cost increase. Any new~~  
3 ~~program or higher level of service provided by a local agency~~  
4 ~~pursuant to this act above the level for which funding has been~~  
5 ~~provided shall not require a subvention of funds by the state nor~~  
6 ~~otherwise be subject to Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

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